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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.H. et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

E054219

(Super.Ct.Nos. J233633 & J233634)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.
Schneider, Jr., Judge. Affirmed.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Danielle E. Wuchenich, Deputy County
Counsel, for Plaintiff and Respondent.

I

INTRODUCTION

Mother appeals from juvenile court orders denying her petition under Welfare and Institutions Code section 388¹ to modify orders terminating reunification services.

Mother contends she demonstrated her circumstances had changed and granting the petition was in the best interests of her son, A.C. (16 years old), and daughter, C.H. (12 years old). We conclude there was little evidence of changed circumstances and granting mother's petition was not in the children's best interests. Because there was no abuse of discretion in denying mother's petition, the judgment is affirmed.

II

FACTS AND PROCEDURAL BACKGROUND

Mother and J.H. (father)² met and married in 1996. At the inception of this matter in September 2008, mother and father were living together with their two daughters, C.H. and L.H.³ (five years old), and mother's son and father's step-son, A.C. C.H. suffered from pervasive developmental disorder, intermittent explosive disorder, oppositional defiant disorder, attention deficit disorder, and high functioning autism. A.C. suffered from intermittent explosive disorder and attention deficit hyperactive disorder (ADHD). L.H. suffered from ADHD. Father was diagnosed as a paranoid schizophrenic. Father

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

² Father is not a party to this appeal.

³ L.H. is not the subject of this appeal.

was unemployed and received disability benefits. Mother was working as a phone sex operator out of the family home. The family had a lengthy history with the San Bernardino County Department of Children and Family Services (CFS), with 13 prior reports of abuse or neglect made between August 2004 and the most recent report on September 21, 2008.

On September 21, 2008, CFS received a child abuse hotline report that mother and father were sexually abusing L.H., C.H., and A.C., and physically abusing C.H. Mother and father reportedly also encouraged A.C. and L.H. to sexually abuse C.H. The social worker interviewed A.C. on September 24, 2008. He stated that C.H. inappropriately touched L.H. and “humped” L.H., with both girls’ pants off. This had happened about 10 times. C.H. also “humped” A.C. Her pants were off and his were on during the incident. When asked about a bruise on his arm, A.C. said father had beat him in the past but his bruise was not from father. L.H. reported to the social worker that mother, father, C.H. and A.C. had touched her “privates.” She later denied that mother and father touched her but said mother was mean.

During C.H.’s interview at the Loma Linda Behavioral Medical Center (LLBMC), C.H. reported that mother slapped her face and mouth, hit her “booty” with a belt and touched her private area. Her parents tried to lick her “privates” and touched her privates with their hands. A.C. “humped” her with his pants off. Mother knew about it and told A.C. he could do it.

Based on the children’s interviews, Deputy Stowell of the San Bernardino County Sheriff’s Department executed a search warrant on the family home and took the children

into protective custody. Stowell reported he was familiar with the family, as were many other deputies who had had encounters with the family over C.H. running away and being violent with her parents.

A. Detention Proceedings

On September 26, 2008, CFS filed a juvenile dependency petition under section 300, subdivisions (b), (d), and (g), alleging that mother and father failed to protect and provide regular care for the children. Mother and father allegedly knew or should have known the children were being sexually abused and failed to protect them. In addition, father suffered from schizophrenia, placing the children at risk of being physically harmed by father. Father also engaged in domestic violence in their presence. At the detention hearing, the juvenile court ordered L.H., C.H., and A.C. removed from the family home and placed in separate foster homes. The court authorized weekly, supervised visitation for mother and father, as well as weekly sibling visitation.

In October 2008, the social worker interviewed mother and father separately. Mother conceded she knew the children were sexually abused. She claimed she tried to get help and “they weren’t helping me.” Mother said she reported the sexual abuse in 2005. She claimed the abuse happened only three times, not 10 times, as A.C. claimed. Mother caught C.H. acting out sexually with L.H. three times and separated the girls. The girls’ sexual acts with each other included oral sex and sleeping together naked. A.C. also acted out sexually one time with C.H. Mother denied that she and father sexually abused the children. Mother said that when she was a child, she was sexually and physically abused by her father, and her father and uncles were abused by their

paternal grandfather. Her father and uncles also had sexual relations with each other.

Father stated during his interview that he also was aware of the children's sexual behavior. He told the children not to do it. Mother could not do anything about it.

Father denied that there had been any domestic violence but admitted his relationship with mother was volatile and affected the children because he and mother argued in front of them. Father denied abusing the children.

B. Jurisdiction and Disposition

CFS recommended in its jurisdiction/disposition report filed in October 2008, that the children remain in foster care, since mother and father were unable to protect the children from sexual abuse. In addition, mother and father had unresolved issues relating to sexual abuse, domestic violence, and mental health. Extensive services were needed to resolve mother and father's own issues before the children could be safely returned to them.

CFS reported in its first addendum report that C.H. had said she was sexually abused by her parents and her step-grandfather. L.H. reported her step-grandfather touched her privates and mother hit her when she objected to her parents touching her. In a second addendum report filed in November 2008, CFS recommended the children remain placed in separate foster homes. CFS reported that father notified CFS on October 27, 2008, that mother had left him and had filed for divorce and a restraining order against him.

In a third addendum report filed in December 2008, CFS again recommended the children remain placed in separate foster homes and their parents receive reunification

services. CFS also recommended the children immediately begin therapy. CFS reported that mother did not believe she needed parenting help. She completed an online parenting class, which she believed was sufficient. Mother told her therapist she believed she had resolved her issues regarding being sexually abused as a child. Mother visited A.C. and L.H. weekly. The visits went well.

In a fourth addendum report filed in January 2009, CFS reported that Detective Burgraff of the Crimes Against Children agency interviewed the children, mother, and the children's step-grandfather. The children denied any sexual abuse. Their step-grandfather denied he had sexually abused the children but said he was aware the children had committed sexual acts with each other.

In a fifth addendum report filed in February 2009, CFS reported that mother had been participating in a child abuse prevention intervention and treatment program since November 2008. C.H.'s foster family reported C.H. was hospitalized under section 5150 because of her extreme behaviors. Since then, she had been receiving wraparound (WRAP) services, provided by a multidisciplinary mental health and services team. Mother told the CFS social worker she believed C.H. was evil and feared C.H. would make false allegations against mother if she was placed in mother's home. Mother reportedly continued to work as a phone sex operator. CFS concluded, based on the children's behavior, that they had been sexually abused and mother needed to participate in therapy to address her history of sexual abuse and family incest. CFS recommended in the sixth addendum report filed in March 2009, that the children remain removed from their parents and the parents continue receiving reunification services. Mother reportedly

had met with a therapist twice in February and was participating in parenting classes. C.H.'s visitation was suspended because she did not want to see her siblings or parents. Later on, C.H. asked to visit with her parents but said she did not want to live with them. CFS recommended allowing supervised visits.

At a pretrial settlement conference in April 2009, the parents and CFS agreed, and the court found that the children came within the provisions of section 300, subdivisions (b) and (d). The juvenile court also found jurisdiction as to A.C. under subdivision (g) (A.C.'s father's willingness and ability to parent were unknown). The court struck the substance abuse allegations and found that mother and father had not made any progress in alleviating the causes leading to the children's placement in foster care. The court ordered the children removed from mother and father's custody, and authorized services and supervised visitation for mother and father, but not for A.C.'s father.

C. Six-Month Review

CFS reported in its status review report filed in October 2009, that mother and father divorced in June 2009, and mother moved to Arizona to live with her new boyfriend. Mother was unable to visit the children weekly because of her health and transportation problems. Mother began visiting the children again in July 2009. She began therapy in Arizona in September 2009. Mother had completed some aspects of her reunification plan and was making adequate progress but had not completed therapy.

The children remained placed in separate foster homes because of the allegations of sexual abuse between the children. C.H. reportedly continued to be a problem in her foster home. C.H. intermittently became enraged and it was unknown what set her off.

A.C. had adjusted well to living with his foster father and had bonded with him. A.C.'s biological father, who had been uncooperative in the reunification process, was denied services. At the six-month review hearing in October 2009, the juvenile court ordered that the children remain in foster care, with supervised weekly visitation with mother.

D. Twelve-Month Review

CFS reported in the 12-month status review report, filed in April 2010, that mother terminated therapy in January 2010 because of health insurance problems. CFS arranged for another therapy provider. Mother continued to live with her boyfriend in Arizona and had not maintained weekly visits with the children. Arizona denied the Interstate Compact on the Placement of Children (ICPC) request because of mother's boyfriend's misdemeanor conviction, the lack of fingerprint clearance for him, mother's failure to complete therapy, and her failure to address domestic violence issues. Mother and her boyfriend were unemployed. Mother denied responsibility for the petition allegations of participating in domestic violence and failing to protect her children from sexual abuse.

C.H. was seeing a psychiatrist, receiving psychotropic medication, and attending therapy. She continued to act out aggressively at home and at school. C.H. stated several times that she did not want to live with mother. A.C. also was receiving psychotropic medication for oppositional defiant disorder and ADHD, and attending therapy. A.C.'s father's whereabouts were unknown. A.C. was doing well in his current foster home and was closely bonded to his foster father.

CFS reported in an addendum report filed in June 2010, that mother had increased her visitation with the children during the last two months, with visits in April, May, and

June. During the visits, mother spent most of the time talking to A.C. C.H. and L.H. had stopped trying to get mother's attention during visits and did not appear excited to see mother. Mother's relationship with the children had changed. CFS had warned mother that moving to Arizona could impede reunification. Nevertheless, mother insisted on residing in Arizona. After mother was evaluated by a therapist in Arizona, the therapist notified CFS that individual counseling was not appropriate for mother because she was not "amenable" to individual sessions. The therapist noted that mother's progress in counseling appeared to be "minimal at best."

CFS further reported that mother had not completed her reunification plan, including individual therapy, and had not benefited from services. A second ICPC request, initiated in December 2009, was not completed because mother's boyfriend had a criminal record and had not completed restitution. Mother minimized the seriousness of this. According to mother, her boyfriend was convicted for stealing a debit card from his foster mother in 2007 and still owed restitution.

At the 12-month status review hearing in June 2010, mother testified that she had completed a parenting program while living in California and completed an online course. She also said that the children were happy to see her during visits and she shared her attention equally among them. Mother had not heard from C.H. and had heard from A.C. "every once in awhile." Mother was living in a two-bedroom apartment and only wanted L.H. returned to her. Mother anticipated getting a three-bedroom apartment in August 2010, and then wanted her other two children returned to her as well. Mother said she had a job providing secretarial services but did not have any pay stubs because

she was paid in cash. The juvenile court found that mother had failed to participate regularly in her case plan and had made minimal progress. The court further found that the children were not adoptable and ordered planned permanent living arrangements for the children, with termination of mother's reunification services.

E. Mother's First Section 388 Petition

In November 2010, mother filed a section 388 petition requesting return of the children to mother or, alternatively, reinstatement of reunification services. Attached to her petition was (1) a letter from her therapist stating that she had completed five outpatient individual sessions and 10 women's behavior modification group sessions, (2) completion certificates for a parenting class and women's behavior modification group, (3) verification of mother's one-year apartment lease, and (4) a letter confirming mother's "side-job," in which she earned \$1,000 a month, as of October 2009, for "consulting services." The trial court summarily denied mother's section 388 petition without a hearing on the grounds there was no new evidence or changed circumstances and the requested order was not in the children's best interests.

F. Father's Section 388 Petition

In the November 2010 status review report, CFS reported that the most recent ICPC was rejected in June 2010. C.H. and A.C. were making progress in their foster homes. A.C.'s biological father contacted CPS and requested representation in the juvenile dependency proceedings. Since the last hearing in June 2010, mother's visits were sporadic. During mother's visits with the children in July, August and September 2010, mother paid more attention to A.C. than L.H. and ignored L.H. C.H. repeatedly

stated she did not want to visit with mother. A.C. told the social worker, ““My mother didn’t do what she was supposed to do to get us back.””

A.C. had been frequently visiting his biological father, who lived with A.C.’s paternal grandmother (grandmother). A.C. stated he wanted to live with his father and grandmother, but was willing to maintain contact with mother. A.C. said that if he was unable to live with his father and grandmother, he wanted to be adopted by his foster father. A.C.’s father stated he intended to assume care of A.C. and had been paying child support for him since 2002. On December 8, 2010, A.C.’s father filed a section 388 petition requesting reunification services.

At the permanency planning review (PPR) hearing in January 2011, the juvenile court found that C.H. and A.C. were not adoptable and ordered them to remain dependents of the court. The court also heard and granted A.C.’s father’s section 388 petition. The court authorized weekly unsupervised visitation between A.C. and his father, along with overnight visits at the discretion of CFS. The court authorized supervised visitation with mother once a month.

G. Mother’s Second Section 388 Petition

In May 2011, mother filed a section 388 petition to set aside the June 2010 order terminating reunification services and return the children to mother or, alternatively, reinstate reunification services. Mother alleged she had completed her case plan, had appropriate stable housing and income, and had completed a parenting program and women’s behavior modification counseling. Mother claimed granting her petition was in the children’s best interests because she had maintained consistent contact with them,

visits had gone well, and the children wanted to return to her.

The trial court ordered a nonevidentiary hearing on mother's section 388 petition. The hearing was set on the same date as a section 366.26 hearing concerning L.H. At the combined hearing on June 6, 2011, the court first heard mother's section 388 petition as to L.H., and continued mother's section 388 petition as to A.C. and C.H. to the date of the PPR hearing in July 2011. During the section 388 petition regarding L.H., CFS argued there were no changes in mother's circumstances and section 388 relief was not in L.H.'s best interests. CFS noted mother's section 388 petition was essentially the same as her previous petition filed in November 2010, which the court previously summarily denied. The supporting certificates of completed programs and therapy were dated prior to the previous petition. Mother submitted on the petition. The juvenile court denied mother's petition, finding there were no changed circumstances and granting the petition was not in L.H.'s best interests. The court then proceeded with the section 366.26 hearing as to L.H. The juvenile court found the parent-child bond exception did not apply, terminated parental rights, and ordered adoption as L.H.'s permanent plan.

CFS recommended in its July 2011 review report that C.H. continue in her current group home. She had made progress but still required intensive supervision because of her developmental delays and inability to care for herself or be independent. C.H. continued to commit destructive behaviors against herself and others. C.H. had bonded with the staff at her group home and did not ask about her siblings or parents. CFS recommended A.C.'s plan be changed to family maintenance and placing A.C. in his father's custody. A.C. was participating in conjoint counseling with his father and spent

weekends at his grandmother's home where father lived. A.C.'s father received reunification services and completed therapy and a parenting class. Mother had visited A.C. and C.H. monthly. C.H. did not always want to see mother. A.C. was happy to see mother but wanted to live with his father and grandmother. A.C. and C.H. also visited each other monthly and got along well.

At the hearing on mother's section 388 petition as to A.C. and C.H., the juvenile court denied mother's petition, finding there were no changed circumstances and granting the petition was not in L.H.'s best interests. The court then conducted a PPR hearing. The court ordered long-term foster care for C.H. and ordered A.C. placed in his father's care under a family maintenance plan. The court authorized monthly supervised visitation for mother as to C.H. and A.C.

In December 2011, in a separate appeal concerning L.H. (case No. E053786), this court affirmed the juvenile court's order denying mother's second section 388 petition and order terminating parental rights as to L.H.

In the instant appeal, mother appeals denial of her second section 388 petition as to C.H. and A.C.

III

MOTHER'S SECTION 388 PETITION

Mother contends the trial court abused its discretion in denying her second section 388 petition, filed in May 2011, seeking return of C.H. and A.C. to her care or, alternatively, reinstatement of reunification services.

A. Applicable law

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. [Citation.] The parent bears the burden to show both a “‘legitimate change of circumstances’” and that undoing the prior order would be in the best interest of the child. [Citation.] The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion. [Citation.]” (*In re S.J.* (2008) 167 Cal.App.4th 953, 959-960 [Fourth Dist., Div. Two].)

In evaluating whether parents have met their burden to show changed circumstances, the trial court should consider: (1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.) These factors become less significant once reunification services have been terminated, as in the instant case. This is because, “[a]fter the termination of reunification services, . . . ‘the focus shifts to the needs of the child for permanency and stability’ [citation], . . .” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

B. Changed Circumstances

The children were removed from mother for serious reasons, which included domestic violence in the presence of the children, failure to protect the children from

sexual abuse, and poor parenting skills. Mother argues that her section 388 petition, filed in May 2011, showed her circumstances had changed because she completed a parenting program and women's behavior modification counseling and had terminated her violent relationship with father. Mother also alleged in her petition that she had stable housing in Arizona, had married her boyfriend, and had stable income.

The juvenile court reasonably concluded mother had not met her burden of demonstrating changed circumstances. There was little, if any, evidence of any change of circumstances since mother's first section 388 petition, which was summarily denied in December 2010. Mother relied on the same evidence supporting the first petition, which included the same certificates, reports, and residency verification. There was no additional evidence showing any change, other than mother marrying her boyfriend, whom neither A.C. nor C.H. knew.

In addition, mother's bond with A.C. and C.H. was tenuous at best. A.C. stated he was willing to see mother but did not want to live with her. A.C. wanted to live with his father and grandmother, with whom he had closely bonded. As to C.H., mother had previously conceded she was unable to control C.H. and had said C.H. was "evil." C.H. had previously said she did not want contact with mother, although more recently had been willing to see her. Mother's visits with C.H. and A.C. remained supervised and both times CFS requested ICPC's, the requests were rejected.

Even assuming, mother's circumstances were changing, "[a] petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify at some future

point, does not promote stability for the child or the child's best interests. [Citation.]

“‘[C]hildhood does not wait for the parent to become adequate.’” [Citation.]” (*In re Mary G.* (2007) 151 Cal.App.4th 184, 206.) Here, where mother's bond with C.H. and A.C. was tenuous, the court could reasonably find that mother's circumstances had not sufficiently changed under section 388.

C. Best Interests of the Children

Mother also failed to meet her burden of establishing it was in the children's best interests to grant mother's petition seeking return of the children to mother's care or reinstating reunification services. The children had been in protective custody nearly three years. “‘When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child.’” (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

In the instant case, A.C. had bonded with his biological father, paternal grandmother, and his foster father. A.C. wanted to live with his biological father and paternal grandmother, and if that did not work out, he wanted to live with his foster father. The juvenile court authorized A.C. to be placed in the custody of his biological father under the supervision of the court. Although A.C. expressed a desire to maintain contact with mother, he did not want to live with her. He told the social worker he realized that mother did not do what she needed to do for him to return to her care. Returning A.C. to mother's care or reinstating reunification services under such circumstances was not in the best interests of A.C.

As to C.H., mother acknowledged she had been unable to control C.H. C.H. had very serious emotional problems. She required constant supervision. Furthermore, mother had not completed parenting classes or individual therapy. C.H. had improved while living in her current placement in a group home. The State of Arizona's denial of two requests for ICPC's further supported the juvenile court's finding that it was not in the children's best interests to place them with mother in Arizona or, alternatively reinstate reunification services. Mother has failed to refute the "rebuttable presumption that continued foster care is in the best interest of the child." (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON

J.

We concur:

RAMIREZ

P.J.

McKINSTER

J.